

**REMARKS**

✓ A new oath/declaration will be filed under separate cover as soon as the applicant is able to sign the new document.

**35 USC § 112**

Claim 1 was rejected under 35 USC § 112 for failing to specifically define the structural relationship between the cells, the additive, and the particles. Claim 1 was further rejected for failing (a) to define the role of the additive and the particle, and (b) to specify what other factor, if any, effects the separation of the network from the cell-depleted portion. The applicant disagrees, especially in view of amended claim 1.

As amended herein, claim 1 now recites "...wherein the additive has substantial binding to the cells and the particles and wherein the particles have substantial binding to the cells and the additive", and as further amended herein, claim 1 now recites "...by applying a force, wherein the force comprises a magnetic force".

Claim 4 was rejected under 35 USC § 112 as being indefinite for failing to provide a comparative basis for the term flexible. The applicant disagrees, especially in view of amended claim 4.

As amended herein, claim 4 now recites, "...has at least two walls with one wall being more deformable than the other wall".

Claim 6 was rejected under 35 USC § 112 for being unclear since claim 6 does not specifically define the composition of the particles. The applicant disagrees, especially in view of amended claim 6.

As amended herein, claim 6 now recites "...wherein each of the particles has a volume of between about  $5 \times 10^{-24} \text{ m}^3$  to about  $5 \times 10^{-6} \text{ m}^3$ ".

Claim 7 was rejected under 35 USC § 112 as being indefinite for failing to specify what other factor effects the substantial binding of the particles. The applicant disagrees, especially in view of amended claim 7.

As amended herein, claim 7 now recites, "...wherein the particles are coated."

Claim 10 was rejected under 35 USC § 112 as being indeterminate in scope for failing not to define what is encompassed within the composition in the polymer. The applicant disagrees, especially in view of amended claim 10.

As amended herein, claim 10 now recites, "...the coating comprises a polycationic polymer."

Claim 12 was rejected under 35 USC § 112 for being indefinite and confusing in reciting "comprises a primary and a secondary antibody". The applicant disagrees, especially in view of amended claim 12.

As amended herein, claim 12 now recites, "...the particles comprise a primary antibody and the additive comprises a secondary antibody, the primary antibody having a substantial binding to a surface component of the cells, and the secondary antibody having a substantial binding to the primary antibody."

Claims 13-21 were rejected under 35 USC § 112 for being in improper dependent form. With respect to claims 13 and 14, the applicant agrees. Claims 13 and 14 have been amended. With respect to claim 15-21, the applicant disagrees. Claims 15, and 17 - 21 recite "The method of any of claims 1-12...", properly referring to the claims in the alternative form.

As amended herein claims 13 and 14 recite now "The method of any of claims 1 – 12..."

Claim 14 was rejected under 35 USC § 112 as being indeterminate in scope for failing to specify what other elements are included in the sample. The applicant disagrees, especially in view of amended claim 14.

As amended herein claim 14 now recites, "...wherein the blood cells comprise white blood cells and platelets.

Claim 15 was rejected under 35 USC § 112 as being unclear by reciting "comprising measuring PSA". The applicant agrees, claim 15 has been amended.

As amended herein, claim 15 now recites "...measuring prostate specific antigen."

Claim 16 is missing. The applicant agrees. Claim 16 has been added.

Claim 17 was rejected under 35 USC § 112 as being indefinite in reciting "theoretically available cell depleted portion". The applicant disagrees, especially in view of amended claim 17.

As amended herein claim 17 now recites, "...at least 70% by volume of the cell depleted portion..."

Claim 1-21 were objected to because of missing claim 16 or improper numbering. The applicant agrees. Claim 16 has been added.

### **35 USC § 103**

The subject matter of claims 1-21 was commonly owned at the time the invention was made.

Claims 1-21 were rejected under 35 USC § 103(a) as being obvious over **Doshi et al.** in view of **Kelland et al.** The applicant disagrees, especially in view of amendments herein to claim 1.

### **Magnetic force limitation**

Doshi et al. teach an apparatus for red blood cell separation in which agglutinated blood cells are removed by a filter (and optionally a secondary filter). Claim 1 (and claims 2-21 by virtue of their dependence on claim 1) require the limitation "...using a force, comprising a magnetic force to separate the agglutinated whole blood components..." Doshi et al. do not teach

or suggest the use of a force, comprising a magnetic force. Thus, claims 1-21 are non-obvious over Doshi et al.

Moreover, since Doshi et al. utilize filtration with one, or more than one filter for the separation of blood cells from a blood cell containing fluid, Doshi et al. clearly teach away from employing a magnetic force to separate a cell containing portion from a substantially cell depleted portion as presently claimed. A filter is not a magnetic force.

#### **Network limitation**

Kelland et al. teach a method and apparatus for continuous magnetic separation of individual particles from a slurry in accordance to the magnetic movement of the particles. The slurry is fed through a non-magnetic canister comprising a magnetic wire extending within or outside the canister, and susceptible particles are diverted from their flow path into separate outlets. Claim 1 (and claims 2-21 by virtue of their dependence on claim 1) recite the limitation "...combining the sample, the additive, and the particles...to produce a cell containing network..." Kelland et al. do not teach, suggest or provide a motivation to produce a cell-containing network. Therefore, claims 1-21 are not obvious over Kelland.

Furthermore, it should also be recognized that Kelland et al. teach a continuous separation of individual particles from a slurry, thereby clearly teaching against a cell-containing network. Particles are individual and separate entities, a network comprises a plurality of interconnected entities.


No combination of Doshi et al. and Kelland et al. teach, suggest, or provide a motivation to employ a magnetic force to separate a cell-containing network from a substantially cell depleted portion.

**REQUEST FOR ALLOWANCE**

Claims 1-21 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,

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